

programming at prime viewing times. Programming times could be determined by the importance of the programming to the community instead of its profitability. The additional costs of providing this service could be more than offset by the huge increase in broadcasting time on the other channels that the broadcaster can devote to commercial purposes.

The major drawback to this proposal would be its impact on broadcasters who wish to broadcast one HDTV station instead of several SDTV stations. Broadcasters who wish to broadcast one HDTV station will not have the increased revenue that multicasting broadcasters will have. However, those broadcasters should not be exempt from serving the public interest. Therefore, new regulations should be more flexible with HDTV broadcasters so they can take advantage of digital technology without any undue burden. One suggestion would be to establish a certain percentage of total programming that each broadcaster must devote to public interest programming. This requirement could be met with a dedicated station for SDTV broadcasters and other, less stringent requirements, such as the use of extra bandwidth for public interest obligations, for HDTV broadcasters.<sup>8</sup>

#### **IV. The Commission Should Develop Sanctions for Broadcasters Who Do Not Satisfy Their Public Interest Responsibilities**

Broadcasters can develop extensive codes of conduct in their attempts to serve the public interest. They can also promise to abide by any regulations that the FCC adopts.

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<sup>8</sup> Less stringent requirements for HDTV broadcasters might also encourage broadcasters to broadcast in HDTV, which is the route that Congress and the FCC originally expected broadcasters to pursue.

However, without the threat of sanctions against stations that do not meet the requirements, broadcasters will continue to conduct business as usual and public interest programming will continue to decline in relation to the total amount of available programming. The only way to ensure that broadcasters use digital technology to benefit the public interest is to develop graded sanctions for broadcasters who chose not to follow public interest guidelines.

A system of graded sanctions for broadcasters who do not satisfy their public interest obligations would be much more effective in promoting public interest programming than our current system. Withdrawal of a license is an extreme sanction, and will very rarely be done. When it is the only available sanction, broadcasters can be reasonably sure that it will not occur, and can reduce public interest programming with little fear of repercussions. However, a graded system, such as the one used in Italy, would be much more effective. The 1990 Broadcasting Act allows the regulatory authority in Italy to fine broadcasters or temporarily suspend licenses for violations that would not justify revocation of a license.<sup>9</sup> This type of graded sanctioning system would give the Commission the strength it needs to enforce any regulations it chooses to adopt.

## **V. Conclusion**

Broadcasters have done a fair job of repaying society for the use of the public airwaves by broadcasting programs that serve the public interest. Nevertheless, the advent of digital technology will enable broadcasters to greatly expand their programming and

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<sup>9</sup> [www.benton.org/DigitalBeat/db041699.html](http://www.benton.org/DigitalBeat/db041699.html) (Public Interest Obligations in Broadcasting-International Comparisons)

revenue. The Commission should take action now to ensure that broadcasters use this new technology in a way that will benefit the public interest. By establishing clear public interest requirements that broadcasters must meet, requiring a small but substantial portion of total programming time to be devoted to public interest programming, and developing sanctions for broadcasters who do not meet minimum public interest requirements, the Commission can make sure that society, as well as broadcasters, benefit from the switch to digital broadcasting.

RECEIVED  
March 17, 2000

MAR 23 2000

FCC MAIL ROOM

**To:** Magalie Roman Salas, Executive Secretary- Federal Communications Commission

**From:** Amy E. Neff

**CC:** Professor Glenn H. Reynolds, University of Tennessee College of Law

**Date:** March 17, 2000

**Re:** Comments on Proposed Rulemaking Concerning Public Interest Obligations of Television Broadcast Licensees (Docket No. 99-360)

Dear Secretary Salas,

This comment is sent in response to the FCC's request for public comments, 65 Fed. Reg. 4211 (January 26, 2000), regarding the public interest responsibilities of television broadcasters in the wake of digital technology. Specifically, I am writing to advocate that the FCC capitalize on the timing of this transition to digital television ("DTV") in order to formulate new, more quantitative guidelines regarding children's programming. These new guidelines should be designed to make broadcasters take responsibility for the role television plays in the development of our nation's children.

Although the views contained within this comment may reflect my views as a law student, my comments primarily stem from my role as a soon-to-be stepmother to two school-age girls and from my hopes that someday I will raise a child of my own.

**Introduction:**

Like it or not, television has become a prevalent part of most children's lives. It is the after-school baby-sitter for children arriving home from school before their parents arrive home from work. It is the pacifier to young children whose busy parents do household chores. It is a major form of recreation for many children, who, unexplainably, are not as interested in playing in the neighborhood as my friends and I were as children. Today's children prefer watching television to more active pursuits. Consequently, it is probable that when children are introduced to the additional features DTV can offer, it will be even more difficult to separate them from the television.

Since our children are spending an increasing amount of time in front of the television, our need for broadcasters to provide programming specifically geared towards children's education increases. This is not an "if you can't beat them, join them" approach; rather, it is a realistic approach that takes into account the unavoidable fact that children watch a significant amount of television,<sup>1</sup> and will continue to do so.

**Broadcasters Have Been Allowed to Shirk  
Their Public Interest Duties.**

The Federal Communications Commission ("FCC") has been down this proverbial road before with television broadcasters

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<sup>1</sup> On the average, children ages 2-17 watch 3 hours of television per day. Television Audience 1993 at 14, Nielsen Media Research, 1993.

regarding their public interest obligations to children. In the early 1970's the FCC explicitly recognized that broadcasters had an obligation to provide educational programming to children. At that time though, the FCC determined that no quantitative requirements, other than a limit on the amount of commercials, were needed to ensure that the obligation was recognized. Not surprisingly, this hope for self-regulation in the industry regarding children's programming remained just that, a hope. Then, in 1984, even after a task force determined that broadcasters were only making half-hearted efforts to provide children's programming, the FCC again chose to refrain from structuring a quantitative standard for measuring the broadcasters' performances. Finally, when Congress enacted the Children's Television Act ("CTA") in 1990, the FCC responded with a rulemaking to accommodate mandates in the legislation regarding children's programming.

After the public expressed concern at the lack of guidance provided for broadcasters in the CTA rulemaking, the FCC issued its children's television policy statement and accompanying rules to alleviate this concern. **Still, the problem is that the FCC has not required enough of broadcasters. Too many of the policies propagated by the FCC in 1996 allow broadcasters the "wiggle room" to opt out of making any real substantive changes**

to the children's programming they provide. Recall the following portions of the policy:

1. The FCC created a term called "core programming" that encompassed the agency's requirements for children's programming. In this definition, the FCC declined to require that such programming have education as its *primary* purpose. Instead, programming only had to have children's education as a *significant* purpose. Additionally, the FCC stated that it would rely on the good faith judgment of broadcasters to determine whether a program had this *significant educational purpose*. (Clearly, this is a self-regulating measure.)
2. No particular age groups needed to be targeted in order to qualify as core programming.

These and other provisions of the policy statement enabled broadcasters to meet their public interest obligations with minimal effort.

**The Guidelines for DTV Broadcasters Should Include  
Quantitative Standards**

The FCC's Notice of Proposed Rulemaking ("NPRM") asked how its children's television policy statement should apply in a digital environment. The answer is that the policy needs to be strengthened before it is applied to DTV broadcasters.

Several letters from members of Congress have preceded this NPRM suggesting that DTV broadcasters simply be required to comply with provisions of the CTA in order to receive a DTV license. These legislators are advocating that the FCC simply reasserts a position that has proven to be ineffective in improving children's programming. To merely require the FCC to enforce the CTA and its accompanying rules would allow DTV broadcasters to once again escape from providing the children's programming that is needed.

However, federal legislators aren't the only ones backing away from a stronger position by the FCC regarding children's programming. Industry insiders, as expected, are promoting an approach that isn't going to put any real pressure on broadcasters to make any substantive changes. For example, in a letter written by the Chairman of Paxson Communication Corporation to the FCC, the Chairman recommends that the FCC adopt the company's proposed Public Interest Code of Conduct ("Code").<sup>2</sup> In this Code, there is only one reference to children, and it is a general one.<sup>3</sup> Conversely, scattered throughout the Code is text that ensures broadcasters will retain their prized

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<sup>2</sup> Letter from Lowell Paxson, Chairman of Paxson Communication Corporation, to William Kennard, Chairman, Federal Communications Commission (Feb. 11, 2000).

<sup>3</sup> "Television stations' service to their communities includes contributions to political discourse, public service announcements, children's, religious, educational and cultural programming as well as involvement in specific community activities." Letter from Paxson to Kennard, at 4.



discretion, allowing them to essentially opt out of the Code's requirements.

It is apparent that broadcasters are not going to move beyond what is required of them, unless compelled to do so by the guidelines for DTV licensees. Therefore, broadcasters that have become accustomed to fulfilling their existing public interest obligations regarding children by doing the bare minimum need to have the bar raised. Establishing some new quantitative standards would accomplish this goal.

**The FCC Should Adopt the Recommendations for Quantitative Standards Proposed by People for Better TV.**

As People for Better TV (PTV) correctly pointed out, DTV technologies provide a fertile ground for the expansion of children's educational programming.<sup>4</sup> Accordingly, PTV advocates that DTV broadcasters should be required to set aside a minimum of 7 hours each week for children's educational programs. Since DTV enables data transmissions to schools and multicasting, broadcasters would seem to have ample opportunity to meet such a standard.

Even if the level of children's programming was already at the 7 hours per week level, frequent interruptions for commercials would still effectively divert children's attention from educational topics. In its reminder to the FCC that a

public proceeding on the public interest obligations of DTV broadcasters should be held, PTV recommended that commercials be limited during children's programs to four sixty-second commercials per hour.<sup>5</sup> That would allow for 56 of every 60 minutes of children's programming to be free of advertising. Currently, broadcasters may use 10.5-12 minutes (weekends or weekdays respectively) of every hour of children's programming for commercials.<sup>6</sup>

Historically, the reason broadcasters have not been supportive of more children's programming, particularly for younger children, is that children are not consumers, and the advertising spots that make the broadcasters money are more effectively shown during adult programming. Yet, it is these same broadcasters that oppose limits to the amount of commercials that may be shown during children's programs. This fickle position indicates that broadcasters really just don't like being told what to do by the FCC.

The commercial limits proposed by PTV could go a step further, however. Why not require DTV broadcasters to schedule commercials only at the beginning and at the end of programs, particularly 30-minute programs? A guideline such as this would

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<sup>4</sup> Letter from Mark Lloyd, Counsel for People for Better TV, to William Kennard, Chairman, Federal Communications Commission (Nov. 16, 1999), at 2.

<sup>5</sup> Letter from Lloyd to Kennard, at 2.

<sup>6</sup> 47 U.S.C.S. § 303a (1990).

allow children to watch a program free of interruption.<sup>7</sup> This approach would be more in keeping with a serious commitment to educating children through the medium of television, a definite public interest.

Other quantitative measures that could be implemented would simply require some fine-tuning of the 1996 policy statement. For instance, perhaps core programming should target specific age groups of children. Currently, broadcasters tend to meet existing weekly children's programming goals by airing primarily programs targeted at teenage "children." They do this because teenagers, unlike toddlers, are consumers that can and do respond to advertising.

I would also suggest that the FCC modify its requirement that core programming occur between 7:00 a.m. and 10:00 p.m., by requiring broadcasters to include children's programming at specific times of the day when children are watching- after school, before bedtime, during the dinner hour, etc. This would preclude broadcasters from grouping children's programs at non-peak viewing times in an effort to save prime time for adult programming exclusively. Again, with multicasting capabilities, this guideline should not be difficult to meet.

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<sup>7</sup> This is an idea called "clustering" by Action for Children's Television, the group that first promoted the concept. Charting the Digital Broadcasting

**DTV Broadcasters Can Be Precluded from  
Hiding Behind the First Amendment.**

Concededly, the FCC's control of DTV broadcasters is limited by the First Amendment, which accords significant editorial powers to broadcasters in the name of free speech. At this same time, the FCC has been given a counteracting power to specifically determine the public interest obligations of broadcasters.

Television broadcasters have a duty to be public trustees.<sup>8</sup> They must act as fiduciaries of the public interest, as if owned by the public. At the same time, broadcasters are in business to make money. These rivaling goals put broadcasters in a unique position where they must serve two masters- the government and the broadcasting companies' shareholders.

Congress was clearly concerned about the failure of broadcasters to place priority on children's programming when it passed the CTA. During the discussion of the CTA, Congress concluded that the First Amendment would not prevent the FCC from considering whether a television licensee has provided programming specifically designed for children when issuing or renewing a license.

The United States Supreme Court has echoed the views of Congress regarding the First Amendment's application to

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Future: Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, (Dec 18, 1998), at 29.

children's programming. In fact, the Court has even gone so far as to hold that the FCC has the ability to impose limited content restraints on broadcasters.<sup>9</sup>

The quantitative standards proposed in this comment, if implemented by the FCC, do not contemplate regulating content. They are content neutral and only impose quantitative constraints on the broadcaster's use of digital television. Surely, if content limitations would be allowable, quantitative standards should pass First Amendment scrutiny.

### Conclusion

Although the technology of DTV promises to enhance all types of programming, including children's programming, it is really the advent of its use that is more significant. The transition to DTV allows the FCC to exert real pressure on broadcasters that desire digital licenses. Through the propagation of some rules with "bite," the FCC can finally stop broadcasters from shirking important public interest responsibilities. The FCC should create guidelines that acknowledge the active role television plays in children's education. Congress recognized this and stated: "it has been clearly demonstrated that television can assist children to learn important information, skills, values, and behavior."<sup>10</sup>

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<sup>8</sup> Charting the Digital Broadcasting Future, supra note 8, at 19.

<sup>9</sup> Turner Broadcasting v. FCC, 512 U.S. 622 (1994).

<sup>10</sup> 47 U.S.C.S. § 303a (1990).

RECEIVED  
MAR 23 2000  
FCC MAIL ROOM

To: William Kennard, Chairman, Federal Communications Commission

From: Amy Fletcher

CC: Prof. Glenn Reynolds

Date: March 17, 2000

Re: Comments on Public Interest Requirements for Digital Broadcasters

Dear Chairman Kennard,

I am writing to you in response to the Federal Communications Commission's request for comments on public interest requirements for broadcasters during the transition to digital technology, 65 FR 4211, FCC 99-390 (Jan. 26, 2000).

#### Introduction and Background

With ninety-eight percent of American households having at least one television set, television has arguably the most influential presence in American culture. I have relied on television for varying purposes at every point in my life, and it has undoubtedly had an influence on me. As a "child of the Eighties," I grew up watching educational programs such as *Sesame Street* and *Mister Rogers' Neighborhood*. As I matured, I began to rely on television more for entertainment value and for my primary source of news. A day rarely goes by that I do not turn on my television set. Since television is such an influential medium, public interest requirements should become more sophisticated to keep up with the transition into a digital era.

The notice of proposed rulemaking for public interest obligations of television broadcast licenses addresses two particular areas that are of great concern to me: children's programming and political programming. Television broadcasters must be aware that many parents choose, whether right or wrong, to use television as a babysitter.

The FCC should impose the highest obligations on broadcasters of children's programming to ensure that children will not be adversely affected by the things they see and hear on television during the times of day they are likely to be watching.

My second concern is the amount of airtime, or lack thereof, that is dedicated to political candidates and campaigns, as well as issues that may be affecting communities locally. Technically, broadcasters are merely "borrowing" the airwaves from the viewing public. With this being the case, broadcasters should have explicit obligations to provide coverage of the issues that affect the viewing public they serve.

As a young adult female who desires both a family and a career in the political arena, I am very concerned about the impact digital technology may have on my children and my career. I would like to urge the FCC to continue to hold television broadcast licensees to high standards for public service. As we move forward into a digital age, we must use advancements in technology to likewise advance the quality of public service.

#### Standards for Children's Programming

An article I read recently described television in two distinct ways as to its effect on a child's life: it can be a positive educational tool, or a value-destroying influence. The FCC must ensure that television continues to be an educational tool for children of all ages. Current regulations place limits on the duration of advertisements that can be shown during children's programs. Broadcasters are limited to only 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays.<sup>1</sup> Frequency may become a bigger problem than duration when the internet merges with television, and these numbers may become obsolete.

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<sup>1</sup> 47 U.S.C.A. § 303a(b).

Surfing the web without seeing advertisements on every site you visit is practically impossible today. In addition, these advertisements may be targeted for a specific product or service that is related to the subject of the site you are visiting. As I was doing web-based research for this comment, the website [mvp.com](http://mvp.com) mysteriously appeared on my screen without my having to link to it. Out of nowhere, Wayne Gretzky, Michael Jordan, and John Elway, all smiling, decided they wanted me to push a button so I could have the latest pair of New Balance tennis shoes for *only* \$89.99. Children should not be subjected to this manner of targeted advertising. Without strict standards, this capability will be carried over to our television sets as digital technology becomes more prevalent.

One of the greatest threats to the well being of children is the ability to target commercials to specific households depending on the choice of programming. Marketers will know what we watch, and when and how often we watch it. This poses a serious enough threat to adults who are easily coaxed into buying products. Imagine if vulnerable children could “ORDER NOW” by the simple click of a button while they are watching their favorite cartoon. Children should be able to enjoy watching television without being bombarded with advertisements. When television does merge with the World Wide Web, the FCC should place limits on the number of advertisements that can be shown during the hours of children’s programming. People for Better TV has recommended a limit of four commercials per hour during children’s programs.<sup>2</sup> While this number may be too low, the maximum limit should not exceed twelve. Working with the current duration limits, this would allow two quality commercials for every ten minutes of programming. By imposing these limits, children will be limited as to the



number of products that they can be influenced to purchase while watching their favorite shows.

In addition to imposing advertising obligations, the FCC should consider ways to enhance educational programming through the increase in the number of channels available. Since broadcasters do not own the airwaves they are currently licensed to use, they could be required to “donate” a specified number of hours for use by schools and other educational institutions. The number of hours they donate should be based on the schedules of local school districts. Due to the added capabilities of multicasting, they may have the option of donating an entire channel to further educational purposes. The individual schools could evaluate how to allocate the time that they are given to enhance the education of students. Perhaps the students could develop their own programming to be shown to the community at large, thus improving relationships between the community and the school. Schools may wish to use their airtime strictly for programming to be shown throughout the school. The school could also develop programs to keep children who are ill at home from getting behind other classmates through tutorial programs. With unlimited options, educational institutions would have access to a powerful educational tool that would otherwise be unaffordable without the support of local broadcasting stations.

### Standards for Political Programming

According to the Alliance for Better Campaigns, broadcast time is the single

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<sup>2</sup> *People for Better TV Recommendations* (visited Mar. 11, 2000) <<http://www.bettertv.org.pbtvrec.htm>>.

largest expense in political campaigns.<sup>3</sup> In 1998, a White House advisory panel of broadcasters and public interest advocates recommended that television stations should devote five minutes a night to political discourse as part of their public interest obligations. As of the February 1, 2000, New Hampshire primary, the national networks were airing an average of only thirty-four seconds of political discourse a night.<sup>4</sup> This problem of lack of coverage on the networks has some roots in the extensive coverage offered by cable channels such as CNN, MSNBC, and the Fox News Channel. While many Americans can tune in to these cable networks for political news, around 85 million Americans are left out, because they either are unwilling or unable to pay for cable. Access to political information should not be an economic issue.

The FCC should impose, not merely recommend, obligations on broadcasters to offer free airtime to candidates running in local or national elections. This airtime should be allotted among all interested candidates, so that the station does not inadvertently endorse one candidate over another. This requirement would not only free up funds for political candidates to use in other ways, but it would also ensure that the entire American viewing population remains informed about elections and political issues. People should not be forced to “buy” cable just so they can remain reasonably informed about current events. The remedy to this problem can be justified once again by the fact that broadcasters pay nothing for the use of airwaves. Since the airwaves are borrowed from the public domain, users of those airwaves should be required to keep the public they serve informed on local and national elections.

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<sup>3</sup> *Issue Brief: Free Air Time* (visited Mar. 11, 2000)  
<<http://www.bettercampaigns.org/documents/freetime.htm>>.

<sup>4</sup> *Network Viewers Get Fleeting Glimpses of Presidential Hopefuls, Study Finds* (visited Mar. 7, 2000)  
<<http://www.bettercampaigns.org/>>.

Requiring broadcasters to offer free airtime to further political debate will hopefully improve the quality of candidate centered programming. A study by the Project for Excellence in Journalism found that eighty percent of the network coverage leading up to this years New Hampshire primary focused on campaign tactics and strategies, while only thirteen percent was devoted to issues.<sup>5</sup> If broadcast networks would devote free airtime to political candidates by providing forums where important issues could be debated and expressed, voters would be more informed when they head to the ballot box. Likewise, if the viewing public knows more about the candidates' actual platforms, as opposed to their campaign strategies, more people may feel compelled to vote. An additional benefit may be that free airtime would level the playing field between candidates, thus diminishing the public perception that the candidate who raises the most money wins.

With so many benefits possible, broadcasters should be required by the FCC to donate airtime to political campaigns. Three and one-half hours a week, or thirty minutes per day, seems to be an appropriate minimum. Broadcasters would have the option of how to allocate these hours during the week based on the types of programming they would like to show. In non-election years, the required hours could be devoted to local issues that individual communities may be faced with. In election years, the required hours should be allotted equally to important local and national campaigns. Citizens are entitled to adequate coverage of and reasonable access to issues that may affect them. The FCC must impose minimum requirements on local broadcasters to ensure that this duty is not left up to cable stations.

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<sup>5</sup> Sean Elder, *Election-free TV* (visited Mar. 11, 2000) <http://www.salon.com/media/col/elde/2000/02/29/campaigns/index.html>.

### Conclusion

Since the introduction of digital television sets into the market in August of 1998, over 155,000 units have been sold. Sales of digital television sets have increased over 475 percent since this time last year.<sup>6</sup> With more Americans having access to digital technology, the FCC must take action to impose higher standards on digital broadcasters. The increase in capabilities must be accompanied by an increase in the public interest standards in order to provide adequate protection to the viewing public.

The FCC must continue to afford the most protection to children through limits on advertising. Children can also benefit from the transition to digital technology through mandatory education requirements for local broadcasters. In addition, the FCC must ensure that broadcasters devote a specified amount of free airtime to political discourse. As digital technology creates endless possibilities for the way that we watch television, broadcasters must likewise be held accountable for serving the public interests as these possibilities are explored. The airwaves they use are on loan from the public. The FCC has a duty to make certain, through the imposition of high public interest requirements, that broadcasters are worthy of the airwaves they use.

Thank you for your consideration of these matters.

Cordially,



Amy D. Fletcher

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<sup>6</sup> *DTV Sales Start Off Strong in 2000* (visited Feb. 29, 2000)  
<wysiwyg://4.55/http://www.dtvweb.org/news/press\_release.cfm?RecordID=148>.

RECEIVED

MAR 23 2000

FCC MAIL ROOM

**TO:** Magalie Roman Salas, Office of the Secretary, Federal Communications Commission

**FROM:** Chad E. Wallace

**DATE:** March 16, 2000

**RE:** Comments on Commission's Notice of Inquiry on Public Interest Obligations of Television Broadcast Licensees

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**INTRODUCTION AND BACKGROUND**

On January 26, 2000, the Federal Communications Commission published a notice of inquiry concerning the public interest obligations of television broadcast licensees with the advent of digital television. 65 Fed. Reg. 4211 (Jan. 26, 2000). Under the current regulatory scheme, broadcast licensees must comply with various public interest obligations dealing with such issues as community programming, political discourse, and educational programming. The old analog format, under which the present regulatory scheme is based, is being replaced, by mandate, with digital technology. The Commission's notice of inquiry was undertaken to "collect and consider all views" on broadcasters' public interest obligations in the digital world. With these comments, I respectfully respond.

I am a second-year law student at the University of Tennessee College of Law and a consumer of television programming. I am writing to voice my conviction that more public interest obligations should be imposed on television broadcast licensees with the arrival of digital technology. In

particular, with the importance of an informed electorate, more time should be devoted to political discourse either with free or reduced rate time for candidates. And, with the unwavering importance of educational programming for children, the minimum weekly air time devoted to this subject should be increased. Moreover, or in the alternative, the existing or any new obligations imposed should be enforced in a way that truly serves "the public interest, convenience and necessity." Existing regulations are too relaxed and allow broadcasters to fulfill their obligations in irrational forms.

**MORE PUBLIC INTEREST OBLIGATIONS SHOULD BE IMPOSED ON BROADCAST LICENSEES WITH THE INCREASED CAPABILITY OF DIGITAL TELEVISION**

The Telecommunications Act of 1996 specifically provides that the public interest standard is applicable to television broadcasting in the digital era. Digital television allows broadcasters to do more with their existing space in the bandwidth: broadcasters will have the capability, if they so choose, to offer as many as six channels on the digital bandwidth where they could only offer one on the analog format. With the increased capability should come increased public interest obligations and not just increased commercial opportunity for broadcasters. In all fairness, I do recognize that it may play out in the end that broadcasters will still only use one channel of high definition television (HDTV). If that turns out to be

true, their situation will be no different than under the analog format and more regulation may not be appropriate.

If broadcasters are only required to continue to air the same level of public interest programming with digital television as they do with analog, the percentage of public interest television in relation to broadcasters' capability will decline. This means that the on-air public services the broadcasters do provide will become mixed in with an even larger mass of commercial programming. Thus, the overall effect will be a further "diluting" of public service programming--such programming will be harder to find or stumble upon among all the other non-public service programming.

On the other hand, imposing more public interest obligations on broadcasters with digital television would not raise the overall percentage of public interest programming in relation to their overall capability. The level of obligation would remain the same relatively. But broadcasters oppose any new obligations because such would only cut into the additional profits that digital television is certain to bring. Critics of the television industry warn that "digital TV will give broadcasters free reign to make more money and ignore their public service obligations to the public."<sup>1</sup>

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<sup>1</sup> Tim Jones, Panel on TV Standards Shuns New Regulations, Chicago Tribune 1 (Nov. 6, 1998), 1998 WL 2913733.

There are a couple of areas that I would like to specifically comment on--political discourse and educational programming. The "Introduction" to the Notice of Inquiry stated it best: "Television is the primary source of news and information to Americans, and provides hours of entertainment every week. In particular, children spend far more time watching television that [sic] they spend with any other type of media. Those who broadcast television programming thus have a significant impact on society."

With the additional temptation that digital television brings to watch a movie or a rerun of a soap opera instead of a political debate or community service message, the voting public will be even more ignorant than what it is under the analog format: "Better television doesn't mean prettier pictures or better sound, it means more access to educational programming for children and adults, programming on local issues and interactive data services for schools."<sup>2</sup> I understand that people can not be forced to watch political debates or educational shows or the like, but the opportunity should still be present. For example, I do not get the opportunity to watch much television, but when I do, I can not recall seeing much programming that could be classified as meaningful public interest programming. Instead, I see soap operas, movies, wrestling, music videos, Jerry Springer,



or professional sports. I understand that most of these programs have some kind of value if nothing but for entertainment. I also am not advocating for television that airs nothing but political debates or congressional hearings. What I am saying is that the public would be better served if it was more informed, or at least had the opportunity to be more informed, about the issues and decisions that will eventually affect their lives in the future. One of the main reasons I do not vote as much as I should is that I simply do not know enough about the candidates or what they stand for. To me, voting under these conditions would be like flipping a coin. This is not informed decisionmaking.

Thus, in response to your goal of initiating a public debate on whether broadcasters' public interest obligations should be refined to promote democracy and better educate the voting public, I must emphatically reply "yes." Society could only benefit with the increased political discourse by being better decisionmakers. Therefore, I must agree with numerous members of Congress that this Commission should propose regulations providing for free or, at the very least, reduced rate time for political candidates.

Another particular area is educational programming for children. The importance of this subject can not be overstated.

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<sup>2</sup> Robin Brown, Hollywood Reporter 64(1) (Jan. 15, 1999)  
(Statement of Larry Kirkman, executive director of the Benton

No means of communication is as ubiquitous or effective an educator as television. Thus, the increased capability of digital television should be used to provide more time to educational programming. The minimum time set aside each week for educational programming under the present regulatory scheme—three hours per week—should be increased. In addition, the amount of advertisement that takes place during these times should be limited. This time should not be exploited by broadcasters as an additional source of revenue. It is especially important during this time that broadcasters make a conscious effort to stay focused on their public interest obligations.

**EXISTING OR NEW PUBLIC INTEREST OBLIGATIONS SHOULD BE ENFORCED IN  
A MEANINGFUL WAY**

[I] will think of the public interest standard as a sort of once-handsome thoroughbred, so abused and neglected that it has finally broken down in the middle of the track. Perhaps we can take it back to the paddock in the hope that, with care and love, it can recover—or at least produce offspring that recall the beauty of the original. If not, let us simply put the poor beast out of its misery once and for all.<sup>3</sup>

Basic assumptions underlying television broadcasting are that the airwaves are public property and a scarce commodity. That being so, under the Communications Act of 1934 and subsequent legislation, the government allows broadcasters to use the spectrum for free so long as they serve “the public interest, convenience and necessity”—i.e., quid pro quo. However, it is no

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Foundation), 1999 WL 9555950.